UNITED STATES COPYRIGHT ROYALTY JUDGES The Library of Congress

In re

Determination of Royalty Rates and Terms for Ephemeral Recording and Digital Performance of Sound Recordings (WEB IV)

DOCKET NO. 14-CRB-0001-WR (2016-2020)

INTERIM PROTECTIVE ORDER

The Copyright Royalty Judges (Judges) received a Joint Motion to Adopt Protective Order (Joint Motion) docketed on September 23, 2014. To date the Judges have received one opposition, from Apple Inc. (Apple), docketed on September 30, 2014.

The deadline for participants to file reply papers on this motion is October 6, 2014, and the deadline to file Written Direct Statements is October 7, 2014. Because the moving parties filed the Joint Motion so close to the deadline for Written Direct Statements they did not afford the Judges sufficient time to consider and determine issues relating to the terms of a final Protective Order, including:

- (a) The issues raised in opposition by Apple;
- (b) The issue of whether the moving parties intended for a proposed final Protective Order to allow any participant in this proceeding (in the person of an officer, employee, or in-house counsel or other expert) to be deemed a "Receiving Party" with access to "Restricted" materials; and
- (c) The issue of whether and how any *pro se* participant may receive or review Restricted materials if participants are prohibited from receiving Restricted information.

Now therefore, the Judges hereby Order as follows:

- (1) The participants¹, by their counsel, shall *file* their Restricted Written Direct Statements and their unrestricted (*i.e.*, public) Written Direct Statements on or before October 7, 2014 as set forth in the Judges' August 29, 2014 Order Establishing Revised Case Schedule;
- (2) The participants, by their counsel, shall *deliver* on October 7, 2014, their Restricted Written Direct Statements and their unrestricted (*i.e.*, public) Written

¹ See Exhibit A.

Direct Statements *only* to the attorney for each of the other participants as identified in the participant list maintained by the Copyright Royalty Board (a current list is attached to this order);

- (3) Participants shall *deliver* on October 7, 2014, their unrestricted (*i.e.*, public) version of their Written Direct Statements, with proposed Restricted material redacted and logged, to all unrepresented participants in this proceeding (as identified on the participant list attached as Exhibit A to this Order);
- (4) Until the entry of a superseding Final Protective Order in this proceeding, the attorney receiving Written Direct Statements shall not provide copies of any Restricted Written Direct Statements or disclose any of the Restricted contents of any such Restricted Written Direct Statement to any person or entity, other than attorneys and professional staff within his or her law firm who are working on this proceeding under the direction of that attorney.

The Judges encourage participants to address in their reply papers each of the issues identified in sub-paragraphs (a) - (c) of this Interim Protective Order.

Suzanne M. Barnett

Chief Copyright Royalty Judge

DATED: October 2, 2014

EXHIBIT A to Interim Protective Order

Participant¹ List Docket No.14-CRB-0001-WR (2016-2020)

Determination of Royalty Rates for Digital Performance in Sound Recordings and Ephemeral Recordings (WebIV)

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE/FAX
idobi Network LLC	Thomas Cheney		1941 Vermont Avenue NW Washington, DC 20001 tom@idobi.com	P: 202-297-6977
8tracks, Inc. Withdrew PTP 9/26/14				
AccuRadio, LLC	David Oxenford Kurt Hanson	Wilkinson Barker Knauer, LLP	2300 N Street, N.W., Suite 700 Washington, DC 20037 doxenford@wbklaw.com AccuRadio, LLC 65 E. Wacker Place, Suite 930 Chicago, IL 60601 kurt@accuradio.com	P: 202-383-3337 F: 202-783-5851 P: 312-284-2440 F: 312-284-2450
Amazon.com, Inc.	Kenneth Steinthal Joseph Wetzel	King & Spaulding LLP	101 Second Street, Suite 2300 San Francisco, CA 94105 ksteinthal@kslaw.com jwetzel@kslaw.com	P: 415-318-1200 F: 415-318-1300
			Amazon.com, Inc. 410 Terry Avenue North Seattle, Washington 98109-5210 contract-legal@amazon.com	P: 206-266-1000 F: 206-266-7010

¹ This is the Judges' list of counsel of record and unrepresented parties. It does not include participant representatives who have not filed a Notice of Appearance. The Judges direct updates to this list only upon formal, written notice of necessary changes..

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE/FAX .
Apple Inc.	Dale Cendali	Kirkland & Ellis LLP	601 Lexington Avenue New York, NY 10022 Dale.cendali@kirkland.com	P: 212-446-4800 F: 212-446-4900
	Lisa Widup		1 Infinite Loop Cupertino, CA 95014 lwidup@apple.com	P: 408-974-4954 F: 408-974-9105
Beats Music, LLC	Dale Cendali, Esq.	Kirkland & Ellis LLP	601 Lexington Avenue New York, NY 10022 Dale.Cendali@kirkland.com	P: 212-446-4800 F: 212-446-4900
			Beats Music, LLC 555 19 th Street San Francisco, CA 94107 tlenane@beatsmusic.com	P: 917-294-4448 F: 510-295-2687
iHeartMedia, (Previously "Clear Channel Communications, Inc." Notice of name change 9-23-14)	John Thorne Mark Hansen Evan Leon Scott Angstreich Kevin Miller Caitlin Hall Igor Helman Leslie Pope Matthew Huppert	Kellog, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.	1615 M Street, NW, Suite 400 Washington, DC 20036 jthorne@khhte.com mhansen@khhte.com eleo@khhte.com sangstreich@khhte.com kmiller@khhte.com chall@khhte.com ihelman@khhte.com lpope@khhte.com mhuppert@khhte.com	P: 202-326-7900 F: 202-326-7999
	Donna Schneider		iHeartMedia, Inc. 200 E. Basse Rd. San Antonio, TX 78209 DonnaSchneider@ihearmedia	P: 210-832-3468 F: 210-832-3127
CMN, Inc. Withdrew PTP 9/26/14				

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE/FAX
College Broadcasters Inc. (CBI)	David Golden	Constatine Cannon LLP	1301 K Street, N.W., Suite 1050 East Washington, DC 20005 dgolden@constantinecannon.com	P:202-204-3500 F: 202-204-3501
			Catherine Gellis P.O. Box 2477 Sausalito, CA 94966 cathy@cgcounsel.com	P: 202-642-2849
Custom Channels.net, LLC	David Rahn		2569 Park Ln. Suite 104 Lafayette, CO 80026 dave@customchannels.net	P: 303-588-2824
Digital Media Association (DiMA)	Lee Knife		1050 17 th Street, N.W. Washington, DC 20036 <u>lknife@digmedia.org</u>	P: 202-639-9509 F: 202-639-9504
Digitally Imported Inc	David Oxenford	Wilkinson Barker Knauer, LLP	2300 N Street, N.W., Suite 700 Washington, DC 20037 doxenford@wbklaw.com	P: 202-383-3337 F: 202-783-5851
	Ari Shohat		Digitally Imported, Inc. 3457 Ringsby Court, Suite 212 Denver, CO 80216 ari@di.fm	P: 303-997-2202 F: 303-997-1058
Educational Media Foundation	David Oxenford	Wilkinson Barker Knauer, LLP	2300 N Street, N.W., Suite 700 Washington, DC 20037 doxenford@wbklaw.com	P: 202-383-3337 F: 202-783-5851
	Kevin Blair Brian Gantman		Educational Media Foundation 5700 West Oaks Boulevard Rocklin, CA 95765 kblair@kloveair1.com bgantman@kloveair1.com	P: 916-251-1600 F: 916-251-1731

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE/FAX
Feed Media, Inc. Withdrew PTP 9/26/14				
GEO Music Group	George Johnson		23 Music Square East, Suite 204 Nashville, TN 37203 george@georgejohnson.com	P: 615-242-9999
Harvard Radio Broadcasting Co., Inc. (WHRB)	William Malone		9117 Vendome Drive West Bethesda, MD 20817 malone@ieee.org	P: 301-365-1175
Intercollegiate Broadcasting System, Inc. (IBS)	William Malone		40 Cobbler's Green 205 Main Street New Canaan, CT 06840 malone@ieee.org	P: 203-966-4770
	Frederick Kass		367 Windsor Highway New Windsor, NY 12553-7900 ibs@ibsradio.org IBSHQ@AOL.COM	P: 845-565-0003 F: 845-565-7446
Music Reports, Inc. (Dismissed 5/30/14)				
National Association of Broadcasters (NAB)	Bruce Joseph Karyn Ablin Michael Sturm	Wiley Rein LLP	1776 K Street, NW Washington, DC 2006 bjoseph@wileyrein.com kablin@wileyrein.com msturm@wileyrein.com	P: 202-719-7000 F: 202-719-7049
			Jane Mago, Esq. Vice President and General Counsel 1771 N Street, NW Washington, DC 20036 jmago@nab.org	P: 202-429-5459 F: 202-775-3526

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE/FAX
National Public Radio, inc. (NPR)	Gregory Lewis		1111 North Capital Street, NE Washington, DC 20002 glewis@npr.org	P: 202-513-2050
	Kenneth L. Steinthal Joseph R. Wetzel	King & Spaulding LLP	101 Second Streeet, Suite 2300 San Francisco, CA 94105 <u>ksteinthal@kslaw.com</u> <u>jwetzel@kslaw.com</u>	P: 415-318-1211 P: 415-318-1263 F: 415-318-1300
	Ethan Davis	King & Spaulding LLP	1700 Pennsylvania Avenue NW Suite 200 Washington, DC 20006 edavis@kslaw.com	P: 202-626-5440 F: 202-626-3737
National Religious Broadcasters NonCommercial Music License Committee	Karyn Ablin Jennifer Elgin	Wiley Rein LLP	1776 K St. N.W. Washington, DC 20006 kablin@wileyrein.com jelgin@wileyrein.com	P: 202-719-7000 F: 202-719-7049
(NRBNMLC)			Russ Hauth, Executive Director Harv Hendrickson, Chairman 3003 Snelling Avenue, North Saint Paul, MN 55113 russh@salem.cc hphendrickson@unwsp.edu	P: 651-631-5000 F: 651-631-5086
Pandora Media, Inc.	Christopher Harrison		2101 Webster Street, Suite 1650 Oakland, CA 94612 charrison@pandora.com	P: 510-858-3049 F: 510-451-4286
	R. Bruce Rich Todd Larson	Weil, Gotshal & Manges LLP	767 Fifth Avenue New York, NY 10153 r.bruce.rich@weil.com todd.larson@weil.com	P: 212-310-8170 F: 212-310-8007
	Gary R. Greenstein	Wilson Sonsini Goodrich & Rosati	1700 K Street NW, 5 th Floor Washington, D.C. 20006 ggreenstein@wsgr.com	P: 202-973-8849 F: 202-973-8899

PARTY	CONTACT	FIRM	ADDRESS(ES)	TELEPHONE/FAX
Rhapsody International, Inc.	Kenneth Steinthal Joseph Wetzel	King & Spaulding LLP	101 Second Street, Suite 2300 San Francisco, CA 94105 <u>ksteinthal@kslaw.com</u> <u>jwetzel@kslaw.com</u>	P: 415-318-1200 F: 415-318-1300
			Rhapsody International, Inc. 1420 Fifth Avenue, Suite 1500 Seattle, Washington 98101 mreagan@rhapsody.com	P: 415-934-2033 F: 415-536-2940
Sirius XM Radio Inc.	Paul Fakler	Arent Fox LLP	1675 Broadway New York, NY 10019 Paul.fakler@arentfox.com	P:212-484-3900 F:212-484-3990
	Martin Cunniff	Jackson Toof	1717 K Street, N.W. Washington, DC 20036-5342 Martin.cunniff@arentfox.com	P: 202-857-6000 F: 202-857-6395
SomaFM.com LLC	Rusty Hodge		2180 Byrant Street, Suite 208 San Francisco, CA 94110 rusty@somafm.com	P: 415-552-7662
Sound Exchange (SX)	Glen Pomerantz Kelly Klaus Anjan Choundhury	Munger, Tolles & Olson LLP	355 S. Grand Avenue, 35 th Floor Los Angeles, CA 90071-1560 Glenn.Pomerantz@mto.com Kelly.Klaus@mto.com Anjan.Choudhury@mto.com	P: 213-683-9100 F: 213-687-3702
Spotify USA Inc. Withdrew PTP 9/26/14				
Triton Digital, Inc. (Dismissed 6/4/14)				

From:

crb

Sent:

Thursday, October 02, 2014 4:57 PM

Cc:

crb

Subject:

14-CRB-0001-WR (2016-2020) order

Attachments:

10-2-14 Interim Protective Order.pdf

Attached please find the 14-CRB-0001-WR (2016 – 2020) Interim Protective Order.

Please reply as confirmation that you received this email Copyright Royalty Board

From:

Microsoft Exchange

To:

Keys, LaKeshia

Sent:

Thursday, October 02, 2014 4:57 PM

Subject:

Delivered: 14-CRB-0001-WR (2016-2020) order

Your message has been delivered to the following recipients:

Keys, LaKeshia

Subject: 14-CRB-0001-WR (2016-2020) order

From:

Microsoft Exchange

To:

Strickler, David; Barnett, Suzanne; Feder, Jesse

Sent:

Thursday, October 02, 2014 4:57 PM

Subject:

Delivered: 14-CRB-0001-WR (2016-2020) order

Your message has been delivered to the following recipients:

Strickler, David

Barnett, Suzanne

Feder, Jesse

Subject: 14-CRB-0001-WR (2016-2020) order

From:

Microsoft Exchange

To:

Giuffreda, Gina; Whittle, Kimberly; Ruwe, Stephen; Strasser, Richard; crb

Sent:

Thursday, October 02, 2014 4:57 PM

Subject:

Delivered: 14-CRB-0001-WR (2016-2020) order

Your message has been delivered to the following recipients:

Giuffreda, Gina

Whittle, Kimberly

Ruwe, Stephen

Strasser, Richard

<u>crb</u>

Subject: 14-CRB-0001-WR (2016-2020) order

From: Microsoft Exchange

To: Amazon; Anjan Choudhury; Ari Shohat; Bradley Prendergast; Brian Gantman; Bruce

Joseph; C.Colin Rushing; Caitlin Hall; Catherine Gellis (cathy@cgcounsel.com); David Strickler email; Dale Cendali; David Golden; David Oxenford; Donna Schneider; Evan Leo; Frederick Kass; George Johnson; Glenn Pomerantz; Greenstein, Gary; Harv Hendrickson; IBS Frederick Kass; Igor Helman; Jane Mago; Jennifer Elgin; John Thorne; Joseph Wetzel; Karyn Ablin; Kelly Klaus; Kenneth Steinthal; Kevin Blair (kblair@kloveair1.com); Kevin Miller; Kurt Hanson; Lee Knife; Leslie Pope; Lewis, Greg; Lisa Widup; Mark Hansen; Martin Cunniff; Matthew Huppert; Michael Sturm; Nikki Kuna Mark Hansen asst.; Paul Fakler; R. Bruce Rich; Rahn, David; Rhapsody; Russ Hauth; Rusty Hodge; Sabrina

Perelman; Scott Angstreich; Thomas Cheney; Todd Larson; William Malone

Thursday, October 02, 2014 4:57 PM

Subject: Relayed: 14-CRB-0001-WR (2016-2020) order

Delivery to these recipients or distribution lists is complete, but delivery notification was not sent by the destination:

<u>Amazon</u>

Sent:

Anjan Choudhury

Ari Shohat

Bradley Prendergast

Brian Gantman

Bruce Joseph

C.Colin Rushing

Caitlin Hall

Catherine Gellis (cathy@cgcounsel.com)

David Strickler email

Dale Cendali

David Golden

David Oxenford

Donna Schneider

Evan Leo

Frederick Kass

George Johnson

Glenn Pomerantz
Greenstein, Gary
Harv Hendrickson
IBS Frederick Kass
<u>Igor Helman</u>
Jane Mago
Jennifer Elgin
John Thorne
Joseph Wetzel
Karyn Ablin
Kelly Klaus
Kenneth Steinthal
Kevin Blair (kblair@kloveair1.com)
Kevin Miller
Kurt Hanson
Lee Knife
Leslie Pope
Lewis, Greg
Lisa Widup
Mark Hansen
Martin Cunniff
Matthew Huppert
Michael Sturm
Nikki Kuna Mark Hansen asst.
Paul Fakler
R. Bruce Rich
Rahn, David

Rhapsody
Russ Hauth
Rusty Hodge
Sabrina Perelman
Scott Angstreich
<u>Thomas Cheney</u>
<u>Todd Larson</u>
William Malone
Subject: 14-CRB-0001-WR (2016-2020) order

From:

Greenstein, Gary <ggreenstein@wsgr.com>

Sent:

Thursday, October 02, 2014 4:57 PM

To:

crb

Subject:

Automatic reply: 14-CRB-0001-WR (2016-2020) order

I am currently out of the office for a meeting and will be delayed in responding to e-mail.

Regards,

Gary

This email and any attachments thereto may contain private, confidential, and privileged material for the sole use of the intended recipient. Any review, copying, or distribution of this email (or any attachments thereto) by others is strictly prohibited. If you are not the intended recipient, please contact the sender immediately and permanently delete the original and any copies of this email and any attachments thereto.

From: Helman, Igor <ihelman@khhte.com>

Sent: Thursday, October 02, 2014 4:58 PM

To: crb

Subject: Out of Office: 14-CRB-0001-WR (2016-2020) order

I will be out of the office on vacation from October 2 through October 3. During this time, I will have limited access to e-mail and voice-mail and may not be able to respond immediately. If you need immediate assistance during business hours, please call the front desk at (202) 326-7900.

Miller, Kevin J. <kmiller@khhte.com> From:

Thursday, October 02, 2014 4:58 PM Sent:

crb To:

Out of Office: 14-CRB-0001-WR (2016-2020) order Subject:

I am out of the office on business and have limited access to email and voicemail. If you need immediate assistance please contact Jacqueline Moore at 202-367-7726.

From:

Choudhury, Anjan <anjan.choudhury@mto.com>

Sent:

Thursday, October 02, 2014 5:04 PM

To:

crb

Subject:

RE: 14-CRB-0001-WR (2016-2020) order

Confirming receipt. Thank you.

From: crb [mailto:crb@loc.gov]

Sent: Thursday, October 02, 2014 1:57 PM

Cc: crb

Subject: 14-CRB-0001-WR (2016-2020) order

Attached please find the 14-CRB-0001-WR (2016 – 2020) Interim Protective Order.

Please reply as confirmation that you received this email Copyright Royalty Board

From:

Kuna, Nikki K. <nkuna@khhte.com>

Sent:

Thursday, October 02, 2014 4:58 PM

To:

crb

Subject:

Out of Office: 14-CRB-0001-WR (2016-2020) order

I will be out of the office on Thursday, October 2nd, with limited access to email. Please call the receptionist at 202-326-7900 for immediate assistance.

From: Mail Delivery Subsystem <MAILER-DAEMON@pps2b.loc.gov>

To: mreagan@rhapsody.com

Sent: Thursday, October 02, 2014 5:07 PM

Subject: Undeliverable: 14-CRB-0001-WR (2016-2020) order

Delivery has failed to these recipients or distribution lists:

mreagan@rhapsody.com

There's a problem with the recipient's mailbox. Microsoft Exchange will not try to redeliver this message for you. Please try resending this message, or provide the following diagnostic text to your system administrator.

The following organization rejected your message: aspmx.l.google.com.

Diagnostic information for administrators:

Generating server: pps2b.loc.gov

mreagan@rhapsody.com

aspmx.l.google.com #<aspmx.l.google.com #5.2.1 SMTP; 550 5.2.1 The email account that you tried to reach is disabled. I5si9299877qai.32 - gsmtp> #SMTP#

Original message headers:

Return-Path: <crb@loc.gov>

Received: from pps.filterd (pps2b.loc.gov [127.0.0.1]) by pps2b.loc.gov

(8.14.5/8.14.5) with SMTP id s92Kiq12012356; Thu, 2 Oct 2014 16:56:51 -0400

Received: from mail2.loc.gov (acfxhub02.loc.gov [140.147.235.151])

by pps2b.loc.gov with ESMTP id 1psaqs0p4t-1

(version=TLSv1/SSLv3 cipher=AES128-SHA bits=128 verify=NOT);

Thu, 02 Oct 2014 16:56:49 -0400

Received: from LCXCLMB02.LCDS.LOC.GOV ([::1]) by ACFXHUB02.LCDS.LOC.GOV

([::1]) with mapi; Thu, 2 Oct 2014 16:56:49 -0400

From: crb < <u>crb@loc.gov</u>> CC: crb < crb@loc.gov>

Return-Receipt-To: <<u>crb@loc.gov</u>>
Date: Thu, 2 Oct 2014 16:56:50 -0400
Subject: 14-CRB-0001-WR (2016-2020) order
Thread-Topic: 14-CRB-0001-WR (2016-2020) order
Thread-Index: Ac/eq2I6R2z8KcZeSBuMOPsDBC9KOQ==

Message-ID: <<u>E934DB2090788241B343F8B223AB368902D1A068B3@LCXCLMB02.LCDS.LOC.GOV</u>>

Reply-To: crb <<u>crb@loc.gov</u>>
Accept-Language: en-US
Content-Language: en-US
X-MS-Has-Attach: yes
X-MS-TNEF-Correlator:

acceptlanguage: en-US

Content-Type: multipart/mixed;

boundary=" 004_E934DB2090788241B343F8B223AB368902D1A068B3LCXCLMB02LCDS_"

MIME-Version: 1.0

X-Proofpoint-Virus-Version: vendor=nai engine=5600 definitions=7578 signatures=670531

X-Proofpoint-Spam-Details: rule=notspam policy=default score=0 spamscore=0 suspectscore=0 phishscore=0

adultscore=0 bulkscore=0 classifier=spam adjust=0 reason=mlx scancount=1

engine=7.0.1-1402240000 definitions=main-1410020204



14-CRB-0001-WR (2016-2020) ord...

From:

George Johnson < george@georgejohnson.com>

Sent:

Thursday, October 02, 2014 5:07 PM

To:

crb

Subject:

Re: 14-CRB-0001-WR (2016-2020) order

Received

On Oct 2, 2014, at 3:56 PM, crb < crb@loc.gov > wrote:

Attached please find the 14-CRB-0001-WR (2016 – 2020) Interim Protective Order.

Please reply as confirmation that you received this email Copyright Royalty Board

<10-2-14 Interim Protective Order.pdf>

From:

Kurt Hanson < kurt@accuradio.com>

Sent:

Thursday, October 02, 2014 5:26 PM

To:

crb

Cc:

David Oxenford; Jeff Jarmuth

Subject:

Re: 14-CRB-0001-WR (2016-2020) order

Received!

On Oct 2, 2014, at 3:56 PM, crb < crb@loc.gov > wrote:

Attached please find the 14-CRB-0001-WR (2016 – 2020) Interim Protective Order.

Please reply as confirmation that you received this email Copyright Royalty Board

<10-2-14 Interim Protective Order.pdf>

From:

Fakler, Paul M. < Paul. Fakler@arentfox.com>

Sent:

Thursday, October 02, 2014 6:10 PM

To:

crb

Subject:

RE: 14-CRB-0001-WR (2016-2020) order

Receipt confirmed.

Thanks, Paul

Paul M. Fakler Partner

Arent Fox LLP | Attorneys at Law 1675 Broadway New York, NY 10019-5820 212.457.5445 DIRECT | 212.484.3990 FAX paul.fakler@arentfox.com | www.arentfox.com

From: crb [mailto:crb@loc.gov]

Sent: Thursday, October 02, 2014 4:57 PM

Cc: crb

Subject: 14-CRB-0001-WR (2016-2020) order

Attached please find the 14-CRB-0001-WR (2016 - 2020) Interim Protective Order.

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